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Attorneys for Plaintiff  
 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIEGO COLIO-JIMENEZ (1),  
 JOAQUIN CHAVEZ-CARBAJAL (2),

Defendants.

FILED

APR 18 2008

CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 BY DEPUTY

ORIGINAL

Case No. 08cr0300-DMS

**STIPULATION AND JOINT MOTION  
 FOR RELEASE OF MATERIAL  
 WITNESS AND ORDER THEREON**

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Christopher M. Alexander, Assistant United States Attorney, and defendant JOAQUIN CHAVEZ-CARBAJAL, by and through and with the advice and consent of defense counsel, John Ellis, Esq., that:

1. Defendant agrees to enter into this stipulation and to participate in a full and complete inquiry by the Court into whether Defendant knowingly, intelligently, and voluntarily entered into it. Defendant agrees to plead guilty to Count 1 of the Indictment charging Defendant with a mandatory minimum count of Bringing in an Illegal Alien for Financial Gain, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii) and 18 U.S.C. § 2.

2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original agreement to the United States not later than noon on April 14, 2008.

1           3. Defendant agrees to plead guilty to Count 1 pursuant to the plea agreement on or  
2 before 5:00 p.m. on April 17, 2008.

3           4. Material Witnesses Erika Barcia-Martinez, Cecilia Lozano-Velasquez, Damian  
4 Garcia-Garcia, and Jane Doe:

- 5           a. Are aliens with no lawful right to enter or remain in the United States;
- 6           b. Entered or attempted to enter the United States illegally on January 22, 2008;
- 7           c. Were found in a vehicle in which Defendant was a guide and that Defendant  
8 knew or acted in reckless disregard of the fact that the individuals were aliens  
9 with no lawful right to enter or remain in the United States;
- 10          d. The aliens were paying money to Defendant's employers to be brought into  
11 the United States illegally and transported illegally to their destination  
12 therein; and,
- 13          e. May be released and remanded immediately to the Department of Homeland  
14 Security for return to their country of origin.

15          5. After the material witnesses are ordered released by the Court pursuant to this motion,  
16 if Defendant does not plead guilty to the charge set forth above, Defendant agrees that in any  
17 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
18 attack, that:

- 19          a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
20 substantive evidence;
- 21          b. The United States may elicit hearsay testimony from arresting agents  
22 regarding any statements made by the material witnesses provided in  
23 discovery, and such testimony shall be admitted as substantive evidence  
24 under Fed. R. Evid. 804(b)(3) as statements against interest of unavailable  
25 witnesses; and,
- 26          c. Understanding that under Crawford v. Washington, 541 U.S. 36 (2004),  
27 "testimonial" hearsay statements are not admissible against a defendant  
28 unless defendant confronted and cross-examined the witness who made the

1 "testimonial" hearsay statements, defendant waives the right to confront and  
 2 cross-examine the material witnesses in this case.

3 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
 4 immediate release and remand of the above-named material witnesses to the Department of  
 5 Homeland Security for return to their country of origin.

6 It is STIPULATED AND AGREED this date.

7 Respectfully submitted,

8 KAREN P. HEWITT  
 United States Attorney

9 Dated: 4/18/08

10 *for Christopher M. Alexander*  
 CHRISTOPHER M. ALEXANDER  
 Assistant United States Attorney

11 Dated: 4/15/08

12 JOAQUIN CHAVEZ-CARBAJAL  
 Defense Counsel for  
 JOAQUIN CHAVEZ-CARBAJAL

13 Dated: 4/15/08

14 *Joaquin Chavez-Carbal*  
 JOAQUIN CHAVEZ-CARBAJAL  
 Defendant

16 **ORDER**

17  
 18 Upon joint application and motion of the parties, and for good cause shown,

19 **THE STIPULATION** is admitted into evidence, and,

20 **IT IS ORDERED** that the above-named material witnesses be released and remanded  
 21 forthwith to the Department of Homeland Security for return to their country of origin.

22 **SO ORDERED.**

23 Dated: 4/18/08

24 *Barkley L. Major*  
 United States Magistrate Judge

25  
 26  
 27  
 28 Stipulation and Joint Motion for Release of  
 Material Witnesses And Order Thereon in  
 United States v. Colio-Jimenez, et al.